compete is severable from the rest of the contract or not), is lack of mutuality of remedy, as the defendant could not obtain performance of the plaintiff's promise. See 23 HARV. L. REV. 294; 3 COL. L. REV. 1. Although the court does not rest its decision on this ground alone, it really adopts the doctrine, the Master of the Rolls saying, "The plaintiffs have not given and cannot in future give, the defendant this consideration. . . . The plaintiffs are not entitled against the defendant to specific performance . . . without performing, and they cannot perform, the clauses which that agreement contains in favor of the defendant. . . . It would be inequitable if the plaintiffs could have that relief." The case is consequently a welcome addition to the authorities supporting this theory of mutuality.

TRADE-MARKS AND TRADE-NAMES — MARKS AND NAMES SUBJECT OF OWNERSHIP — DESCRIPTIVE WORDS IN FOREIGN LANGUAGE. — The plaintiff manufactured a wine, which it called Tipo Chianti. Later the defendant offered its wine under the name Tipo Puglia. "Tipo" is a common Italian word, meaning "of the nature of." On the ground that "Tipo" was its trade-mark, the plaintiff obtained a temporary injunction, restraining the defendant from using the term. *Held*, that the injunction cannot be sustained. *Italian Swiss Colony* v. *Italian Vineyard Co.*, 110 Pac. 913 (Cal., Sup. Ct.).

The office of a trade-mark is to point out distinctively a maker's goods, so that he may profit by their reputation with the public, and the public, in turn, may be assured that they are getting that maker's wares. See *Amoskeag Manufacturing Co.* v. *Spear*, 2 Sandf. (N. Y.) 599, 605. Words, letters, numerals, or devices may be used as trade-marks. *Shaw Stocking Co.* v. *Mack*, 12 Fed. 707. But words which are merely descriptive and so can be applied equally well to other articles of a like kind may not be appropriated as trade-marks. CAL. CIV. CODE, 1906, § 991; *Caswell* v. *Davis*, 58 N. Y. 223. This principle applies to foreign as well as to English words. *Davis* v. *Stribolt*, 59 L. T. Rep. N. S. 854; *Burke* v. *Cassin*, 45 Cal. 467; *Selchow* v. *Chaffee & Selchow Mfg. Co.*, 132 Fed. 996. But if by long user a descriptive term comes to signify to the public the goods of this particular manufacturer, an imitator will be enjoined on the ground of unfair competition. *Reddaway* v. *Banham*, [1896] A. C. 199. Since, however, the essence of that wrong is the fraud of passing off one maker's products for those of another, the competition is not unfair if, as in the principal case, the packages of the two rival brands are so unlike in appearance that there can be no confusion. *Dadirrian* v. *Yacubian*, 72 Fed. 1010. See 16 HARV. L. REV. 272 *et seq.*

TRUSTS — RESTRAINTS ON ALIENATION OF CESTUI'S INTEREST — POSTPONEMENT OF ENJOYMENT. — The testatrix left property in trust for B, C, and D, providing in her will that the legacies should not be paid until D, the youngest legatee, should have arrived at the age of twenty-five years. Upon coming of age B sought to compel payment of the legacy. *Held*, that she is not entitled to it. *King* v. *Shelton*, 38 Wash. L. R. 714 (D. C., Ct. App., Nov. 2, 1910). See NOTES, p. 224.

WAGERING CONTRACTS — RENEWED PROMISE TO PAY FOR NEW CONSIDERATION. — In consideration of the defendant's renewed promise to pay the plaintiff an over-due gambling debt, the plaintiff refrained, for a specified time, from publishing him as a defaulter. *Held*, that the plaintiff can recover on the new contract. *Wilson* v. *Conolly*, 129 L. T. 572 (Eng., K. B. D., Oct. 14, 1910).

For the discussion of a precisely similar case, see 22 HARV. L. REV. 149. The reasoning of the courts seems unimpeachable, and the criticism directed against the decisions as "whittling away the Gaming Act" should, more properly, be directed towards the Act itself, for not frankly declaring that a wagering con-

tract is illegal, instead of merely making it void. For then, as under the American statutes, the vice of the original transaction would taint the subsidiary one and the purpose of the statute would not be defeated.

WILLS — EXECUTION — SIGNATURE OF TESTATOR AT END OF WILL. — A will was written on three pages of a folded sheet of paper. In drawing up the will, the testatrix wrote the first page, then the third, and finished on the second, where she signed at the completion of her disposition. *Held*, that the will was signed "at the end thereof," within the meaning of the statute. *In re Stinson's Estate*, 77 Atl. 807 (Pa.).

The authorities on this point are confined to England, New York, and Pennsylvania. In accordance with the more liberal doctrine of the principal case, the English courts have held in similar cases that the end of a will is the logical end. *In the Goods of Watton*, L. R. 3 P. & D. 159; *In the Goods of Stoakes*, 23 Wkly. Rep. 62. So, too, where matter following the signature, in point of space, is incorporated by reference or by the logical sequence of the language into a part preceding the signature, the courts of both jurisdictions have held this to be a sufficient compliance with the statute. *Baker's Appeal*, 107 Pa. St. 381; *In the Goods of Birt*, L. R. 2 P. & D. 214. But the New York courts have adopted a stricter interpretation, and require the signature to be at the physical end of the instrument. *Matter of Andrews*, 162 N. Y. 1; *Matter of Conway*, 124 N. Y. 455. See also 13 HARV. L. REV. 686.

WITNESSES — PRIVILEGE AGAINST SELF-INCRIMINATION — USE OF BODY AS AN EXHIBIT. — The defendant, while before a military court of investigation, was compelled to put on a blouse, found near the scene of a murder, to see whether it fitted him. The defendant was later indicted, and at the trial a witness testified that the prisoner put the blouse on and it fitted him. *Held*, that the evidence is admissible. *Holt* v. *United States*, U. S. Sup. Ct., Oct. 31, 1910.

The privilege against self-incrimination properly applies only when the evidence would have to be furnished by the person claiming the privilege in the capacity of one uttering testimony. It is not so broad as to protect the defendant in every respect from being the means by which evidence tending to incriminate him is produced. To use a man as an exhibit does not infringe the privilege; to treat him as a witness to extort communications from him does. See 3 WIGMORE, EVIDENCE, §§ 2250, 2251, 2263, 2265. But often the privilege has been extravagantly extended to exclude the use of the body as an exhibit. *State* v. *Jacobs*, 5 Jones, Law (N. C.) 259 (exhibiton to jury to prove amount of negro blood); *Blackwell* v. *State*, 67 Ga. 76 (standing up to show defendant lacked one foot); *Stokes* v. *State*, 5 Baxt. (Tenn.) 619 (making footprints). Nor does a distinction between using the evidence to prove the issue of identification and using it to prove any other issue seem tenable, since the issue of identification is equally material to the proof of guilt. *Contra*, *State* v. *Johnson*, 67 N. C. 55. In many cases the court might refuse to permit such evidence on other grounds. See *People* v. *McCoy*, 45 How. Prac. (N. Y.) 216; *State* v. *Height*, 117 Ia. 650. *Cf. Union Pacific Ry. Co.* v. *Botsford*, 141 U. S. 250. The principal case accords with many authorities in supporting the above analysis, and declares what is undoubtedly the proper limits of the privilege. *State* v. *Ah Chuey*, 14 Nev. 79 (tattoo marks on chest); *State* v. *Graham*, 74 N. C. 646 (putting foot in footprints). But see 22 Alb. L. J. 144.